IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 13 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADANMOHAN MAMGALDAS

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 13 of 1990
NOTICE SERVED for Petitioner No. 1
MR TANVISH U BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 11/12/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee, three questions have been referred to this Court for its opinion under the provisions of Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") by the Income Tax Appellate Tribunal, Ahmedabad Bench-"B".

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the transaction in question was not a business transaction or an adventure in the nature of trade and it did not give rise to business income and the assessee was subject to tax on profits arising out of the transaction as long-term capital gain?

(2) Whether, the Tribunal erred in drawing an adverse inference on the basis that the appellant had not filed a copy of the statement recorded by the I.T.O. without putting the point to the appellant and overlooking that a copy of the statement was not furnished to him by the I.T.O. despite repeated requests.

(3) Whether, on the facts and in the circumstances of case and particularly bearing in mind that the appellant was a businessman of long-standing and status and bearing in mind the land ceiling legislation the Tribunal ought to have held that the transaction of sale of land was on business account.

Learned Standing Counsel Shri Tanvish Bhatt has appeared for respondent no.1. Nobody has appeared for the applicant-assessee, though the applicant-assessee has been duly served with the notice of this Court.

Looking to the fact that the assessee has not been represented by anybody, we decline to answer the questions.

The Reference thus stands disposed of with no order as to costs.

(A.R. DAVE,J.)

(K.M. MEHTA,J.)

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